

**MINUTES
HAMPTON ZONING BOARD OF ADJUSTMENT
THURSDAY, MARCH 17, 2005**

MEMBERS PRESENT: Michael Kennedy, Chairman
Robert V. Lessard, Vice Chairman
Jennifer Truesdale, Clerk
Tom McGuirk
Jack Lessard, Alternate

OTHERS PRESENT: Kevin Schultz, Building Inspector
Chuck Marsden, Assistant Building Inspector
Angela Boucher, Recording Secretary

The Chairman called the meeting to order at 7:07 p.m. He announced that there is a new member with us this evening and his name is Tom McGuirk. We also have Jennifer Truesdale returning to the Board. He then explained that we need to elect officers as this is a new Board.

Mr. Vic Lessard MOVED to appoint Mr. Mike Kennedy to stay on as Chairman of the Board, SECONDED by Ms. Truesdale.

VOTE: 5-0 UNANIMOUS

MOTION GRANTED.

Ms. Truesdale MOVED to appoint Mr. Vic Lessard as Vice-Chairman, SECONDED by Mr. Jack Lessard.

VOTE: 4-0-1(VL)

MOTION GRANTED.

Mr. Vic Lessard MOVED to appoint Ms. Truesdale to stay on as Clerk, SECONDED by Mr. Jack Lessard.

VOTE: 4-0-1(JT)

MOTION GRANTED.

The Board decided to appoint alternates later during the Business Meeting.

Mr. Vic Lessard noted that he's been on this Board for about 20 years, 9 years on the Planning Board, and was a Selectmen. He has served in Town politics since 1971 or 72. He also noted that Ms. Truesdale has served for years and asked if she was in real estate. She said no. She used to be, but now she works with mortgages. Mr. Lessard explained that he always votes for what's best for the Town. If his conscience tells him to step down, then he does. If anyone thinks he voted on something he shouldn't have, then they should call him. He always answers his phone and would be willing to discuss it. He then led the Pledge of Allegiance.

The Chairman noted that 1 case has been withdrawn this evening: #11-05 – M & M Realty Partnership; and 1 case has asked to be postponed to the April meeting: #14-05 – George Snow.

Ms. Truesdale MOVED TO POSTPONE Petition #14-05 to the beginning of the April meeting, SECONDED by Mr. Vic Lessard.

VOTE: 5-0 UNANIMOUS

MOTION GRANTED.

08-05 The petition of Myrtle Woodward & Barbara Burbank for property located at 292 Winnacunnet Road for Appeal of Administrative Decision from definition of frontage as contained in Article 1.6. This property is located at Map 206, Lot 22 in a RA Zone.

Atty. Craig Salomon and Barbara Burbank came to the table to speak on this petition. Mr. Salomon said that this petition is preliminary to subdividing the lot into two lots; one on the corner of Winnacunnet and Locke Roads and one on Winnacunnet Road. He said he asked the Building Inspector to define contiguous as it

relates to lot frontage and he was told it had to be on one street with the curve of the arc divided in half between both streets. The Zoning Ordinance says that frontage on a public street needs to be contiguous. In the dictionary contiguous means in actual contact; or touching along a boundary or at a point; or unbroken sequence. Mr. Salomon went on to say that this lot has an unbroken line of 84 feet on Locke Road, a curve of 45 feet and 38 feet on Winnacunnet Road. This totals 167 feet. We believe the word contiguous is in the ordinance for a reason. He then spoke of the definition of frontage being adopted in 1984 and revised in 1985, 87, 91 and 96. The word contiguous has been in the definition since 1987 and never have they added "on one street". He said he received a memorandum from Atty. Merrill saying the frontage on "a" street, intends one street. He feels that contiguous was added in 1987 to be sure the frontage wouldn't be broken up on the street. He then referred to the tax map stating that it makes sense to divide the curve in half if the two roads meet at a right angle. But in this case the curve is clearly on the Locke Road side of the lot. If you walk up the sidewalk there is no curve on Winnacunnet Road.

So for two reasons we think Mr. Schultz is wrong, he said: first on the definition of contiguous and second on the dividing of the curve. We have also asked for a variance on the next petition and have asked for a variance on this point in case you don't grant our appeal, he said. He then distributed the definition of contiguous as per his dictionary to the Board and Atty. Merrill.

Atty. Jim Merrill and Building Inspector Schultz came to the table to speak on Mr. Schultz' side of the petition. Atty. Merrill distributed a memorandum laying out Mr. Schultz' response to this Administrative Appeal. He stated that Mr. Schultz determined that the frontage is on 1 road and that the appropriate course is to divide the arc of the curve in half. He then described the proposed lot and stated that, if the intent was to include 1 or more streets in the definition of contiguous, that would have been easily fixed in the ordinance. The Town Planner John Harwood and the previous Planner Jennifer Kimball also concur with Mr. Schultz. A copy of their memo is attached. He has reviewed ordinances of neighboring towns and some specify 1 street, but all state "a" street. The NH-DOT has separate calculations for each highway.

Atty. Merrill went on to say that the common sense, direct approach to the arc would be to split the arc, and Mr. Harwood agrees. This is fair and reasonable. He went on to quote prior cases with his reasoning. These can be referenced in his memo in the file. Mr. Merrill advised that a petition for a variance is the appropriate avenue for this relief. He asked that the Board uphold Mr. Schultz' decision that frontage for any lot must be satisfied on any one road or highway and that accordingly, frontage on multiple streets should not be considered contiguous to satisfy frontage requirements and that the arc of the curve between 2 streets should be equally divided between the two streets for the purposes of determining frontage?

Questions from the Board:

Mr. Lessard brought up cul-de-sac frontage being used for frontage.

Mr. Schultz advised that in the Town's definition of lot width is the distance between the side lot lines, measured along a straight line, parallel to the front line. So it correlates to the frontage.

Comments from the Audience: None.

Atty. Salomon commented that North Hampton does use "1" in their ordinance. Seabrook and Portsmouth do not use "contiguous". Rye uses "1" and "contiguous". Hampton uses "contiguous" and also has the straight line at the setback line.

Atty. Merrill says he thinks the absence of contiguous doesn't make a difference; one and "a" mean the same thing.

Back to the Board:

Mr. Kennedy said he spent time on frontage ordinances in NH and everywhere else he could find. There is one similar to ours in Pembroke. And in 2004 they cleared this up by adding the statement "on one street". Ours does have some ambiguity with "contiguous" and "a" street.

Ms. Truesdale noted that in RSA 674:24 the definition of frontage also specifies "a" street.

Mr. Kennedy recalled a petition for a sign on the corner of High Street and Academy Avenue where the front of the lot needed to be determined because the setback was different.

Ms. Truesdale said the opinion seems consistent with the former and current Town Planners and this Board. We need to show consistency.

Mr. Lessard commented on a time this came up on Elaine and Richard Streets. If the street name didn't change (along the curve) then the whole curve would be frontage.

The Chairman asked the Board and they all agreed that the frontage should be on 1 street.

The Chairman asked the Board if they agree with splitting the curve in half?

Mr. McGuirk agrees that curve should be split. It should be defined and not subjective, he said.

Ms. Truesdale said the Board should stay consistent with prior rulings.

Mr. Salomon said in this case, in reality, the curve is on Locke Road. If it were a 90 degree angle, it should be split, but in this case this shouldn't be applied.

The Board agreed to support Mr. Schultz' determination.

Mr. Vic Lessard MOVED to uphold the Building Inspector's decision, SECONDED by Ms. Truesdale.

VOTE: 5-0 UNANIMOUS

APPEAL DENIED.

09-05 The petition of Myrtle Woodward & Barbara Burbank for property located at 292 Winnacunnet Road seeking relief from Articles 4.2, 4.3 and Article IV, Table 2 Footnote 22 to divide lot into two lots, both proposed lots need relief from dimensional requirements. This property is located at Map 206, Lot 33 in a RA Zone.

Atty. Craig Salomon and Barbara Burbank were present to speak on this petition. Atty. Salomon said this is a proposal to subdivide Map 206, Lot 33, 292 Winnacunnet Road into 2 lots. Both lots will have more than the 15,000 square foot minimum lot size in this zone. Lot 2 will have the frontage. Lot 1 will need a frontage variance. Lot 2 will need 2 variances, the square and lot width at the setback line. The reason we need these is because we are trying to preserve the setback line for the existing buildings. He presented a survey that could meet the square and lot width at the setback line if the lot was vacant. But, due to the existing buildings the lines need to be adjusted. These variances are related to Boccia, he said. Lot 2 has 19,000 square feet and lot 1 has 100+ feet on Locke Road. This is reasonably consistent with the next 4 lots heading up Locke Road, he said. There is a 54x100 foot lot across Winnacunnet Road and there are many lots in the area with 100 feet of frontage. He went on, the 2 driveways exist now. One on Locke Road and 1 on Winnacunnet Road. This isn't contrary to public interest because it's consistent with the existing neighborhood. The Boccia test asks if this is reasonable? This is a permitted use and therefore presumed reasonable. Is there another feasible way to accomplish this? Because of the way the buildings are set on the lot, there's no other way to do it. Is this consistent with the spirit and intent of the ordinance? The frontage requirement is generally to preserve open space. These are existing structures and the lots are similar to the neighborhood. This doesn't affect any public or private rights of others because it is existing. This would not devalue the abutters. When the abutters purchased they thought this was a legal apartment. Mrs. Burbank had to leave at this time. Her daughter Kim sat in her place.

Mr. Salomon went on that he distributed an alternate plan showing the requirements could be met if the buildings weren't already there. What's unique is that these are existing buildings. We could've met the lot width with Lot 2, but he figured a straight line would be better than a zigzag. Again the driveways exist and this is a permitted use. We'll have 19,000 square feet where 15,000 is required. Substantial justice would be done to the applicant because the benefit to the applicant far outweighs any detriment to the neighbors and the Town. This proposal would not diminish the value of surrounding properties because the structures are here, the driveways are here, the lot size is maintained; the frontage is maintained on Lot 2. He finds it hard to believe there would be any diminution of value. He asks that the Board grant this petition.

Questions from the Board:

Mr. Vic Lessard asked where he would put a garage on the main house?

Mr. Salomon answered on the north side there's 42.7 feet there.

Comments from the Audience:

Atty. Jim Merrill, representing the Hampton Board of Selectmen, referencing the Boccia case, disagrees with Mr. Salomon. He does not believe the petitioner met the requirements. This is a self-created hardship. When they purchased this property, they knew it was a single family only zone. He referenced the case of Hill vs. the Town of Chester and Vigeant vs. the Town of Hudson. The proposed use isn't presumed reasonable. This will be contrary to the public interest. This will intensify the use. This is a very busy road.

Mr. Vic Lessard said what bothers him is that this is one of the old houses of Hampton. And next door was an old one room school house. Mr. Salomon has made a very good case. Those abutting lots were approved a long, long time ago. He wouldn't think twice if there were nothing on the lot, but he feels this would devalue the main house.

Atty. Merrill went on that no one is being denied a reasonable use of this property.

John Cochran, 284 Winnacunnet Road, abutter, asked the Board to deny the petition. He moved from a lakefront property with very small lots to this ½ acre lot. He thought this was an in-law apartment. He doesn't want to be surrounded by small lots. This is in our backyard. To make this into 2 lots, you'll be changing the neighborhood.

Atty. Salomon explained that when they bought the property the Boccia case hadn't been handed down. The law of zoning has changed. This is reasonable and permitted and is presumed reasonable. Mr. Cochran expressed concerns about substandard lots, he said. The one next to him has more than the required area and frontage. The only thing it doesn't have is the square.

Mr. Vic Lessard asked if when they bought the property, they were told they couldn't make an apartment out at the garage. Kim answered no.

Atty. Jim Merrill acknowledged that Boccia does apply, but that doesn't knock out a self-created hardship. He's not sure he's heard any special conditions.

Hearing no further comments, the Chairman closed the public hearing portion of this petition.

Chairman Kennedy acknowledged the presence of the ZBA's attorney, Peter Loughlin, and asked him his opinion of area variances on proposed lots.

Atty. Loughlin felt that there's enough area for the 2 lots. The Boccia test is for dimensional variances.

Mr. Jack Lessard said the lot isn't big enough for 2 homes. He can't see how 2 lots can be made out of this. It's just too much.

Mr. Kennedy added that both lots meet the lot size requirement. It's the shape that doesn't fit. Not density.

Mr. Vic Lessard added that if this were just plain land, he could see where this would be fine. But you got an old colonial house. I think personally it's like you are saying "you didn't give me this so I'm coming in another way". What's going to stop someone from coming here and doing the same thing?

Mr. McGuirk agrees with Mr. Lessard, if this were vacant it would be different, and he agrees with Mr. Cochran small lots are for at the beach and when he bought he thought this was already an in-law situation.

Ms. Truesdale said they have enough land, but the buildings are already there. She also feels like Vic with them coming in another way because they didn't get the apartment. She also feels the Board helps people at the beach, why not here.

Mr. Kennedy doesn't see the devaluing and he can't see taking a conforming lot and create 2 non-conforming lots.

Mr. Jack Lessard MOVED TO DENY the petition, SECONDED by Mr. McGuirk.

VOTE: 4-0-1(JT)

PETITION DENIED.

Mr. Lessard said he voted against this not because it would devalue the neighborhood, but it will devalue the red house.

A break was taken at 8:45 p.m. The Board reconvened at 9:00 p.m.

At this time the Board discussed the petition for rehearing for the Majestic.#103-04 and the fact that there isn't enough members present to hear that petition. The Chairman advised the public that the case cannot be heard this evening and it will either be heard next week, if there is another meeting this month; or if there is no meeting next week then it will be on the Business Meeting agenda in April.

10-05 The petition of David and Ann Brussard for property located at 1032 Ocean Boulevard seeking relief from Article 4.5.2 to construct a new single-family residence with 7 foot side setbacks where 10 foot side setbacks are required. This property is located at Map 133, Lot 545 in a RA Zone.

Atty. Stephen Ells came to the table to speak on this petition. He noted that there is a letter in the file authorizing him to represent the owners the Broussards. He said that they wish to construct a new home on the site with 7 foot setbacks where 10 feet is required. This was previously Town leased land. The house will be pulled back from the ocean property line 10 feet. He displayed a colored rendering of the proposed structure and distributed to the Board smaller copies. The building is designed by William Sutkoff of TMS Architects. We are not asking for a height variance, he said. He then read through the 5 criteria as submitted with his petition.

Questions from the Board:

Mr. Vic Lessard said he received a call from Mrs. McIntoch, the southerly abutter, who is concerned with her sight/view. He feels that if the building is moved back from the ocean, as Mr. Ells has presented, then she'll be happy. He asked the number of bedrooms.

Mr. Ells responded 4 bedrooms, as in the deed restriction.

Comments from the Audience: None.

Back to the Board:

Mr. Vic Lessard MOVED TO GRANT the petition, SECONDED by Ms. Truesdale.

The Chairman polled the Board on their satisfaction that the 5 criteria required for granting a variance are being met and the Board members unanimously agreed that they were satisfied with the petitioner's response.

VOTE: 5-0 UNANIMOUS

PETITION GRANTED.

12-05 The petition of Timothy Jones for property located at 16 Duston Avenue seeking relief from Articles 4.1, 4.1.1, 4.4, 4.5.1 and 4.5.2 to demolish the existing non-conforming building and replace it with a condex, where the lot is undersized, the front and side setbacks cannot be met and a roof structure will exceed the 35-foot height limitations (although the building itself will be conforming as to height). This property is located at Map 295, Lot 44 in a RB Zone.

Atty. Peter Saari and Tim Jones came to the table to speak on this petition. Atty. Saari explained that this property is surrounded by condominiums on 3 sides. The property at the immediate west was 1 lot and was subdivided into 2 duplex lots. Existing on the property is a 2 foot westerly setback. That will improve to the 4 feet required. What was one time a single family area has become condos. Each unit will be 20 feet wide.

The foundation will be 5 feet from the lot lines. Compared to the setbacks and the units around it, this will be similar. They will be similar to the units to the west and smaller than the ones across the street. The height variance is fairly minimal. He then read through his responses to the 5 criteria as submitted with the petition. This is a fair compromise, he said. It's not too intense.

Questions from the Board:

Mr. Vic Lessard asked how close this will be to the ranch to the east. He answered 7 feet per the abutter's letters.

Mr. Schultz asked if the elevations show a deck on the roof?

Mr. Jones answered yes, there is a flat roof with a common deck.

Mr. Kennedy asked about the unsealed surface. Mr. Saari responded 15%.

Clerk Truesdale read a letter in the file from abutters Jack & Christine Kavanagh opposing the petition.

Comments from the Audience: None.

Back to the Board:

Atty. Saari commented that that abutter is about 2 feet from the lot line to this property. They have had the luxury of having a lot of open space over the years on that side of the petitioner's property. The setbacks are 4 feet. The question usually is –is it better from the neighborhood and comparable to the neighborhood.

Mr. Jones added that he phoned Mr. Kavanagh 3 weeks ago to let him know about this proposal. They've been neighbors for 8 years. He doesn't have a problem with Mr. Kavanagh using his property to repair his property at times. He doesn't agree with his characterization of their phone calls. Mr. Jones said he also has a problem with his own fireplace because of the taller condos to the west and the height of his current building. He cannot use it.

Mr. Kennedy commented that if this fell under Simplex he'd have a problem with it, but it falls under Boccia and he doesn't.

Mr. Kennedy MOVED TO GRANT the petition, SECONDED by Ms. Truesdale.

The Chairman polled the Board on their satisfaction that the 5 criteria required for granting a variance are being met with 4 agreeing and Mr. McGuirk not sure.

VOTE: 3-0-2(VL, TM)

PETITION GRANTED.

13-05 The petition of Drew Niccolini for property located at 9 Epping Avenue seeking relief from Articles 1.3 and 4.5.1 to enlarge existing Belvedere room on roof and add a deck within the existing roof as front edge of deck is 18.8 feet from front property line. This property is located at Map 299, Lot 2 in a RB Zone.

Mr. Niccolini came to the table to speak on the petition. He said he moved here 3 ½ years ago and has had repeated leaks around the cupola. He needs to either remove it or make it better. He will be within the 20 foot front setback, 1.2 inches into the setback. He read through the 5 criteria as presented with his petition. He's next to Roseanne Wright., who is 10 feet lower than him so it doesn't affect her. He's not changing the footprint.

Comments from the Audience: None.

Back to the Board:

Mr. Lessard MOVED TO GRANT the petition, SECONDED by Mr. McGuirk.

The Chairman polled the Board on their satisfaction that the 5 criteria required for granting a variance are being met and the Board members unanimously agreed that they were satisfied with the petitioner's response.

VOTE: 5-0 UNANIMOUS

PETITION GRANTED.

15-05 The petition of Maplecroft Building and Development, LLC for property located at 180 Drakeside Road seeking relief from Articles 4.1.1, 8.2.3 and 8.2.6 to demolish the existing dwelling and replace with 10 townhouse condominiums, in two buildings of 5 each with all required parking and meeting all height requirements, but where the lot area/dwelling unit and 40' setback requirements are not met and a very small corner of the parking is in the 20-foot buffer. This property is located at Map 172, Lot 12 in a G Zone.

Mr. Vic Lessard steps off the Board for this petition.

Atty. Peter Saari and Jack Kopka came to the table to speak on this petition. Mr. Saari explained that this plan is straight forward. There are 10 units in 2 -5 unit sections on a little over 1.7 acres. There's 1 space under each unit for a car and spaces at the rear of the lot. There are 4 extra spaces. They are under the 35 foot height limitation. Both buildings are outside the 20 foot buffer. The only encroachment into that buffer is a very small corner of the parking area. But it's not in violation because it's a grass area, which is an approved area for the buffer. On the far side exists a warehouse and a business use. Across the street is Hampton Meadows. This is a permitted use, he said. In the alternative, we could put one building in the center. Breaking the units up lessens the visual impact. There is 5100 square feet of land area per unit. It's not that much denser than Hampton Meadows and less dense than the recently approved condos. He feels this is reasonable. It's a relatively small development. The neighborhood is essentially condos.

Comments from the Audience:

John Goclowski, 3 Hampton Meadows, said that if you fly over Hampton Meadows the size is rather impressive. But if you drive by it doesn't really look that large. It's true we share snow plows and lawn mowers, but we are single family homes. The density of 10 units on 1.7 acres is excessive. The 40 foot setback goes through the buildings. A nice farmhouse exists there now. It seems a shame to tear that down. This is unreasonable and it should not be granted.

Cryon Cyros, 100 Hampton Meadows, said he's opposed to this proposal because it far exceeds the Zoning Ordinance, unnecessarily so. In 1977 the property was purchased by Howard Page, on May 18, 2001 it was purchased by Morgan Ryan for \$775,000 and 5 months later, on November 1st, this owner purchased for \$300,000. He paid a lot less than it was worth. Last night the Planning Board voted down the large development that this Board approved next door because of the traffic and safety. Drakeside Road is already overburdened. He feels the road is already over extended.

Mr. Kopka explained that Morgan Ryan bought the adjacent land with this house and subdivided it out, then sold to him. What we paid for our house has nothing to do with this petition. We are surrounded by condos. The value of single family cannot be achieved. He plans to move the house if possible. If you drew a line around 10 Hampton Meadows units it would be approximately the same size as this lot. When they were approved you could count wetlands as part of the density. You can't now.

Atty. Saari added that Hampton Meadows is a bunch of single family homes in a fairly close proximity to each other. They don't meet the 40 foot setback. 10 cars is not a large amount of traffic to add. Traffic's not this Board's concern. This is consistent with the neighborhood.

Mr. Cyros said they do have a 40 foot setback from the street. There's a vast difference between single family condos and multi-family condos.

Mr. Saari responded that this property has the 40 foot setback from the street.

Back to the Board:

Mr. McGuirk said he doesn't see anything wrong with this. There's not a lot of variances to be asked for here. There seems to be mostly planning issues the abutters are concerned with.

Ms. Truesdale said she agrees with everything other than lot area per dwelling unit.

Mr. McGuirk MOVED TO GRANT the petition, SECONDED by Ms. Truesdale.

The Chairman polled the Board on their satisfaction that the 5 criteria required for granting a variance are being met, with only Ms. Truesdale not agreeing with all 5.

VOTE: 3-0-1(JT)

PETITION GRANTED.

Mr. Jack Lessard MOVED to close the public hearing portion of the meeting at 10:17 p.m., SECONDED by Ms. Truesdale.

SO VOTED.

BUSINESS MEETING:

The Board discussed possible alternate appointments.

Mr. Vic Lessard MOVED to appoint Henry Stonie as an alternate for 3 years, SECONDED by Ms. Truesdale.

VOTE: 4-0-1(TM)

MOTION PASSED.

The Board discussed the Motion for Rehearing for #109-04 – Three G, LLC, petition by Atty. Craig Salomon for Lorraine Cullen Revocable Trust.

Mr. Vic Lessard MOVED to deny the rehearing and recommend that the petitioners come in with a new petition for the 1 variance that was missed, SECONDED by Ms. Truesdale.

VOTE: 5-0

PEITITON DENIED.

The meeting was adjourned at 10:40p.m.

Respectfully submitted,

Angela Boucher,
Recording Secretary